

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	2053.04
COMPLAINT INVESTIGATOR:	Sally Cook
DATE OF COMPLAINT:	September 4, 2003
DATE OF REPORT:	October 3, 2003
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	March 2, 2004

COMPLAINT ISSUES:

Whether the Taylor Community School Corporation and the Kokomo Area Special Education Cooperative violated:

511 IAC 7-27-4 by failing to utilize the case conference process in connection with a decision about grade level placement (retention).

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) that was in effect during the 2002-2003 school year, specifically, failing to implement the behavior intervention plan (BIP), specifically by failing to provide an escort.

511 IAC 7-27-7(a) by failing to implement the student's current IEP, specifically by failing to provide instruction and services to the student in the special education setting.

511 IAC 7-25-6 by failing to conduct a reevaluation of the student after thirty-six months.

FINDINGS OF FACT:

1. The Student is fifteen years old and, as of the date the Complaint was filed, the Student was eligible for special education and related services due to a health impairment. Subsequently, the Student's case conference committee (CCC) reconvened to consider the report of an independent educational evaluation, and the Student's primary disability was identified as mild mental disability.
2. During the 2002-2003 school year, the Student was enrolled in 9th grade in the local high school. The Student earned two credits and failed the remaining courses. The course failures were noted on the Student's report cards. The Complainant acknowledges receipt of the report cards.
3. The Student's CCC met on May 28, 2003, and adopted various revisions and additions to the Student's individualized education program (IEP) that were to take effect on the first day of the 2003-2004 school year. Although the Student's CCC Report/IEP addresses participation in 10th grade ISTEP+, the CCC Report does not indicate that the CCC discussed or decided grade level placement.
4. Upon registering for classes for the 2003-2004 school year, the Parent received a preliminary class schedule that identified the Student's grade level placement as Grade 9. On or about August 15, 2003, the School revised the Student's schedule (the Schedule). The revised Schedule identified the

Student's grade level placement as Grade 10, although the Student had not earned the 9 credits that are required for sophomore (10th grade) classification.

5. On May 28, 2003, the Student's Behavior Intervention Plan (BIP) was revised with respect to providing an escort to class. The revised BIP specified that, after the third tardy to class, the Student will be required to have an escort. As of Friday, August 22, 2003, the Student had been tardy to class three times. An escort was provided beginning on or about Monday, August 25, 2003.
6. The Student's official attendance record indicates that the Student was again tardy to a class on Friday, August 29, 2003, and Friday, September 5, 2003. The School has offered no explanation for the tardies that were recorded during the time that an escort was provided.
7. The Assistant Principal informed the Student of the school-wide rules regarding consequences for tardiness, including detention and suspension. The Student Handbook states that the consequence for the 2nd tardy to a class is one detention. The Student was required to serve detention on August 26, 2003. The Behavior Intervention Plan did not state that the Student is exempt from general school rules written in the Student Handbook.
8. The Student's CCC Report/IEP, as revised on May 28, 2003, calls for the Student to be in general education classrooms 25% of the time and special education classrooms 75% of the time. The CCC notes indicate that the Student will have two general education classes.
9. The School uses a block scheduling system, with 90-minute classes on alternating days. Students are enrolled in eight classes, four of which meet on Day 1 and the remaining four of which meet on Day 2. The block scheduling was not utilized on the first day of school, August 15, 2003. From August 18, 2003, through September 24, 2003, there were 14 Day 1's. On September 24, 2003, the Student's CCC met and revised his IEP and placement.
10. From August 15, 2003, to September 24, 2003, the Student was assigned to a special education classroom for 1 period out of 4 on Day 1 and 3 periods out of 4 on Day 2. Day 2 did provide for placement in special education classrooms 75% of the class time, whereas Day 1 did not. Overall, the Student's Schedule provided 50% of class time in special education classrooms and 50% in general education classrooms. The Student was enrolled in four general education classes.
11. The School conducted its most recent re-evaluation of the Student during the period from August 18, 2001, when testing was administered, through January 17, 2002, when the last piece of documentation was received by the School. The due date had been November 6, 2001.
12. The CCC Report dated December 18, 2002, indicated that the next re-evaluation of the Student would be due October 2, 2005, thus implying that a re-evaluation had been completed or should have been completed on or about October 2, 2002. This was an error.
13. On May 28, 2003, the local director of special education granted the Complainant's request for an independent educational evaluation (IEE) at public expense. The IEE was conducted on August 21, 2003, and discussed at a CCC meeting on September 24, 2003. The Complainant acknowledges that the IEE is an adequate remedy for any mistakes that may have occurred regarding re-evaluation of the Student. The CCC Report dated September 24, 2003, indicates that the next re-evaluation is due August 21, 2006.

CONCLUSIONS:

1. Findings of Fact #2, #3, and #4 indicate that the Student was not retained. Because high school classification by grade is determined by the number of credits earned, there was no decision to be made about grade level placement (retention). In this context, it is not required to utilize the CCC process for decision-making. Therefore, no violation of 511 IAC 7-27-4 occurred.
2. Finding of Fact #5 indicates that the Student was provided with an escort to class in a timely manner, as required by the Behavior Intervention Plan. However, Finding of Fact #6 remains unexplained. Finding of Fact #7 indicates that the Behavior Intervention Plan did not override general school rules. Therefore, no violation of 511 IAC 7-27-7(a) occurred with respect to implementing the behavior intervention plan (BIP) by providing an escort or by imposing a detention for a tardiness that occurred prior to the time that an escort was required.
3. Findings of Fact #8, #9, and #10 indicate that the Student's Schedule did not conform to the placement determination in the Student's CCC Report/IEP, with the result that the School provided a total of 43.5 hours less than was required to be provided in special education classrooms. Therefore, a violation of 511 IAC 7-27-7(a) occurred by failing to provide the required amount of instruction and services to the Student in the special education setting.
4. Findings of Fact #11 and #12 indicate that a re-evaluation of the Student was not due during the 2002-2003 school year. Therefore, no violation of 511 IAC 7-25-6 occurred. Finding of Fact #13 indicates that appropriate corrective action has been taken for any procedural errors that may have occurred in connection with re-evaluation.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

On or before November 7, 2003, Taylor Community School Corporation and the Kokomo Area Special Education Cooperative shall:

Reconvene the Student's case conference committee to determine details regarding a total of 43.5 hours of special education instructional services that shall be provided to the Student as compensatory services. These details include, but are not limited to, a descriptive statement of the services and the length, frequency, location, initiation date, and duration date.

Documentation of compliance, including a schedule of the services to be provided, shall be submitted by November 21, 2003.